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 ONYX PHARMACEUTICALS, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

ONYX PHARMACEUTICALS, INC.,

Plaintiff,

v.

BAYER CORPORATION, BAYER AG,  
 BAYER HEALTHCARE LLC, AND  
 BAYER SCHERING PHARMA AG,

Defendants.

Case No. C 09-2145 (MHP)

**ONYX PHARMACEUTICALS, INC.'S  
 OBJECTIONS TO BAYER'S EVIDENCE IN  
 SUPPORT OF BAYER'S MOTION FOR  
 SUMMARY JUDGMENT**

**DATE:** April 25, 2011  
**TIME:** 2:00 p.m.  
**JUDGE:** Hon. Marilyn Hall Patel

Plaintiff, Onyx Pharmaceuticals, Inc. ("Onyx") hereby objects to Defendant Bayer Corporation, Bayer AG, Bayer Healthcare LLC, and Bayer Schering Pharma AG's ("Bayer") evidence, offered in support of Bayer's Motion for Summary Judgment (attached to the Declaration of Brian C. Swanson in Support of Bayer's Motion for Summary Judgment (for Exhibits 1-80) and the Supplemental Declaration of Brian C. Swanson in Support of Bayer's

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Motion for Summary Judgment (for Exhibits 81-87)) (“Bayer’s Evidence”). Onyx reserves the right to further object to Bayer’s Evidence before or during trial.

### **Objections to Bayer’s Evidence**

Ex. No.	Description and Citation Reference	Grounds for Objection
27	Excerpt from deposition transcript of Lila Adnane, a Bayer employee, taken June 24, 2010.  [Cited in Bayer’s Brief ISO Bayer MSJ at 12-13, 14]	<b>Hearsay (FRE 802/803); Foundation / Lack of personal knowledge (FRE 602).</b>  Testimony cited is of 30(b)(6) corporate designee with insufficient personal knowledge of the subject of testimony and thus relies on hearsay. <i>See, e.g., Century Pac., Inc.</i> , 528 F. Supp. 2d 206, 216 n.5 (S.D.N.Y. 2007).
63	Minutes from a “Meeting between Onyx Pharmaceuticals and Bayer/Miles in Richmond, CA on January 25/26, 1994.”  [Cited in Bayer’s Brief ISO Bayer MSJ at 14]	<b>Hearsay (FRE 802/803).</b>  Minutes purport to record meeting of January 25/26, 1994, but are dated March 23, 1994 and thus were not made “at or near the time” of the meeting as required by FRE 803(6) and are inadmissible hearsay. <i>See, e.g., Zenith Radio Corp. v. Matsushita Elec. Indus. Co.</i> , 513 F. Supp. 1100, 1229 (E.D. Pa. 1981) (“[T]he date of the document, December 11, 1965, indicates that it was prepared about two months after the meeting it supposedly records, which leads to the conclusion that it was not made ‘at or near the time’ of the event recorded, as is also required by Rule 803(6).”).
81	Excerpt from deposition transcript of William Scott, a Bayer Chemist, taken May 6, 2010, pages 43:16-44:20, 47:22-48:2, 164:12-165:11. [Cited in Joint Statement of Undisputed Facts B14, B15, B16, B18]	<b>Hearsay (FRE 802/803); Foundation/Lack of personal knowledge (FRE 602).</b>  Testimony cited is of 30(b)(6) corporate designee with insufficient personal knowledge of the subject of testimony and thus relies on hearsay. <i>See, e.g., Century Pac., Inc.</i> , 528 F. Supp. 2d 206, 216 n.5 (S.D.N.Y. 2007).

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1 Pursuant to the Court's Trial Requirements, Addendum I, attached hereto is a copy of the  
2 Swanson Declarations, which include a list of all of Bayer's exhibits offered in support of its  
3 Motion for Summary Judgment. Onyx has indicated thereon its objections.

4  
5 Dated: April 19, 2011

COOLEY LLP

6  
7 /s/ Martin S. Schenker

8 Martin S. Schenker  
9 Attorneys for Plaintiff  
10 ONYX PHARMACEUTICALS, INC.  
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# ATTACHMENT

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BAYER CORPORATION; BAYER HEALTHCARE LLC;  
15 BAYER AG; BAYER SCHERING PHARMA AG

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION  
19

20 ONYX PHARMACEUTICALS, INC.,

21 Plaintiff,

22 v.

23 BAYER CORPORATION, et al.,

24 Defendants.  
25  
26

Case No. CV 09 2145 MHP

**DECLARATION OF BRIAN C. SWANSON  
IN SUPPORT OF BAYER'S MOTION FOR  
SUMMARY JUDGMENT**

**HEARING DATE: APRIL 25 AT 2 P.M.**

27 EXHIBITS 2-3, 5, 7-9, 11-12, 14, 17, 24, 30-46, 48-50, 53-54, 58-62, 65-67, 70, 72-80

28 PROVISIONALLY FILED UNDER SEAL

1 I, Brian C. Swanson, declare as follows:

2 I submit this declaration in connection with Bayer Corp.'s, Bayer HealthCare LLC's,  
3 Bayer Schering Pharma AG's and Bayer AG's (collectively, "Bayer's") Motion for Summary  
4 Judgment. I am a partner with the law firm of Bartlit Beck Herman Palenchar & Scott LLP. I  
5 have been admitted to practice and am an attorney in good standing in the state of Illinois. I have  
6 been admitted *pro hac vice* in this Court. I have personal knowledge of the facts set forth in this  
7 declaration. I am competent to testify as to the matters set forth in this declaration, and I would do  
8 so if called to testify.

9 1. Attached hereto as Exhibit 1 is a true and correct copy of the web page located at  
10 [http://www.bayerhealthcarepharmaceuticals.com/en/company/about\\_us/strategy/index.php](http://www.bayerhealthcarepharmaceuticals.com/en/company/about_us/strategy/index.php) (visited  
11 3/13/11).

12 2. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the  
13 deposition transcript of Frank McCormick, one of the founders of Onyx Pharmaceuticals, Inc.,  
14 taken February 22, 2011.

15 3. Attached hereto as Exhibit 3 is a true and correct copy of Bayer Deposition Exhibit  
16 30, the Collaboration Agreement, dated April 22, 1994.

17 4. Attached hereto as Exhibit 4 is a true and correct copy of the web page located at  
18 [www.cancer.gov/cancertopics/factsheet/Therapy/targeted](http://www.cancer.gov/cancertopics/factsheet/Therapy/targeted) (visited 3/11/11).

19 5. Attached hereto as Exhibit 5 is a true and correct copy of an excerpt from the  
20 deposition transcript of Hollings Renton, retired chairman and CEO of Onyx, taken September 29,  
21 2010

22 6. Attached hereto as Exhibit 6 is a true and correct copy of Bayer Deposition Exhibit  
23 72, Onyx's 1996 10-K, dated March 31, 1997.

24 7. Attached hereto as Exhibit 7 is a true and correct copy of Bayer Deposition Exhibit  
25 148, Onyx PowerPoint slides from an Onyx Board of Directors meeting.

26 8. Attached hereto as Exhibit 8 is a true and correct copy of Bayer Deposition Exhibit  
27 31, the First Amendment to the Collaboration Agreement, dated April 24, 1996.

1           9.       Attached hereto as Exhibit 9 is a true and correct copy of Bayer Deposition Exhibit  
2 32, the Second Amendment to the Collaboration Agreement, dated February 1, 1999.

3           10.       Attached hereto as Exhibit 10 is a true and correct copy of an excerpt from the  
4 deposition transcript of Klaus Brandau, former Head of International Cooperation and Licensing at  
5 Bayer, taken November 10, 2010.

6           11.       Attached hereto as Exhibit 11 is a true and correct copy of Bayer Deposition  
7 Exhibit 157, Onyx PowerPoint slides from the February 3, 1994 Onyx Board of Directors meeting.

8           12.       Attached hereto as Exhibit 12 is a true and correct copy of an excerpt from the  
9 deposition transcript of Robert Jones, an attorney at Cooley, taken October 26, 2010.

10          13.       Attached hereto as Exhibit 13 is a true and correct copy of an excerpt from the  
11 deposition transcript of William Scott, a Bayer chemist, taken May 6, 2010.

12          14.       Attached hereto as Exhibit 14 is a true and correct copy of an excerpt from the  
13 deposition transcript of Gideon Bollag, former Onyx employee, taken July 19, 2010.

14          15.       Attached hereto as Exhibit 15 is a true and correct copy of an excerpt from the  
15 deposition transcript of Timothy Lowinger, former Bayer chemist, taken December 13, 2010.

16          16.       Attached hereto as Exhibit 16 is a true and correct copy of an excerpt from the  
17 deposition transcript of Bernd Riedl, a Bayer chemist, taken November 5, 2010.

18          17.       Attached hereto as Exhibit 17 is a true and correct copy of an excerpt from the  
19 deposition transcript of Todd Yancey, former Onyx employee, taken October 8, 2010.

20          18.       Attached hereto as Exhibit 18 is a true and correct copy of Onyx deposition exhibit  
21 172, an article from Current Pharmaceutical Design titled "Design and Discovery of Small  
22 Molecules Targeting Raf-1 Kinase," located in volume 8 from 2002, pages 99-110.

23          19.       Attached hereto as Exhibit 19 is a true and correct copy of an article titled  
24 "Discovery of Heterocyclic Ureas as a New Class of Raf Kinase Inhibitors: Identification of a  
25 Second Generation Lead by a Combinatorial Chemistry Approach," published in Bioorganic &  
26 Medicinal Chemistry in volume 11 from 2001, pages 2775-2778, located at BAY00015970.

27          20.       Attached hereto as Exhibit 20 is a true and correct copy of an excerpt from lab  
28 notebook number RB52598 of Reina Natero, located at BAY00039897.



21. Attached hereto as Exhibit 21 is a true and correct copy of an excerpt from lab notebook number RB52593 of Hong Rong, located at BAY00139209.

22. Attached hereto as Exhibit 22 is a true and correct copy of Onyx Deposition Exhibit 60, the sorafenib DP1 document, dated January 25, 1999.

23. Attached hereto as Exhibit 23 is a true and correct copy of an excerpt from the deposition transcript of Scott Wilhelm, a Bayer biologist, taken August 26, 2010.

24. Attached hereto as Exhibit 24 is a true and correct copy of Bayer Deposition Exhibit 14, an agenda and PowerPoint slides from the September 28, 1998 JRDC meeting.

25. Attached hereto as Exhibit 25 is a true and correct copy of an excerpt from Onyx Deposition Exhibit 35, lab notebook number RB 58307 of Jennifer Burke.

26. Attached hereto as Exhibit 26 is a true and correct copy of an excerpt from Onyx Deposition Exhibit 46, lab notebook number RB 58524 of Gloria Hofileña.

**Hearsay  
/ PK**

27. Attached hereto as Exhibit 27 is a true and correct copy of an excerpt from the deposition transcript of Lila Adnane, a Bayer employee, taken June 24, 2010.

28. Attached hereto as Exhibit 28 is a true and correct copy of the web page located at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2005/ucm108538.htm> (visited 3/14/11).

29. Attached hereto as Exhibit 29 is a true and correct copy of the web pages located at <http://cme.nci.nih.gov/dictionary?CdrID=346494>, [cme.nci.nih.gov/dictionary?CdrID=346513](http://cme.nci.nih.gov/dictionary?CdrID=346513), and <http://cme.nci.nih.gov/dictionary?CdrID=346514> (visited 3/11/11).

30. Attached hereto as Exhibit 30 is a true and correct copy of Bayer Deposition Exhibit 34, "Nexavar Development Pipeline," dated June 30, 2010.

31. Attached hereto as Exhibit 31 is a true and correct copy of Bayer Deposition Exhibit 160, Executive Committee Meeting Minutes, dated November 4, 2005.

32. Attached hereto as Exhibit 32 is a true and correct copy of the February 17, 2006 Meeting Minutes for the Joint Development Committee, located at ONYX00288162.

33. Attached hereto as Exhibit 33 is a true and correct copy of Bayer's Supplemental Responses to Onyx's Fourth Set of Interrogatories, dated January 19, 2011.



1           34.     Attached hereto as Exhibit 34 is a true and correct copy of an excerpt from the  
2 deposition transcript of Jörg Möller, Director of International Clinical Development at Bayer,  
3 taken December 2, 2010.

4           35.     Attached hereto as Exhibit 35 is a true and correct copy of Bayer Deposition  
5 Exhibit 300, the Expert Report of Onyx-retained expert Robert Mass, dated January 10, 2011.

6           36.     Attached hereto as Exhibit 36 is a true and correct copy of Bayer Deposition  
7 Exhibit 234, "CRC Program Joint Development Committee" slides, dated January 29, 2009.

8           37.     Attached hereto as Exhibit 37 is a true and correct copy of Onyx Deposition  
9 Exhibit 196, minutes from the December 15, 2008 Executive Committee meeting.

10          38.     Attached hereto as Exhibit 38 is a true and correct copy of Bayer Deposition  
11 Exhibit 109, "CRC KRAS 2nd Line—Business Case Differences" slides, dated July 7, 2009.

12          39.     Attached hereto as Exhibit 39 is a true and correct copy of Bayer Deposition  
13 Exhibit 93, minutes from the August 3, 2009 Executive Committee meeting.

14          40.     Attached hereto as Exhibit 40 is a true and correct copy of Bayer Deposition  
15 Exhibit 58, minutes from the September 11, 2009 Executive Committee meeting.

16          41.     Attached hereto as Exhibit 41 is a true and correct copy of an excerpt from the  
17 deposition transcript of Anthony Coles, president and CEO of Onyx, taken October 20, 2010.

18          42.     Attached hereto as Exhibit 42 is a true and correct copy of Bayer Deposition  
19 Exhibit 88, "Nexavar® Breast Cancer Program Update" slides, dated May 18, 2007.

20          43.     Attached hereto as Exhibit 43 is a true and correct copy of Bayer Deposition  
21 Exhibit 242, the agenda for the December 8, 2010 JDC teleconference with attached slides titled  
22 "Phase III Breast Cancer Programs."

23          44.     Attached hereto as Exhibit 44 is a true and correct copy of an excerpt from the  
24 deposition transcript of Nathalie Lokker, an Onyx employee, taken December 16, 2010.

25          45.     Attached hereto as Exhibit 45 is a true and correct copy of Bayer Deposition  
26 Exhibit 90, minutes from the July 18, 2008 Executive Committee meeting.

27          46.     Attached hereto as Exhibit 46 is a true and correct copy of Bayer Deposition  
28 Exhibit 244, "Phase III Breast Cancer Program" slides, dated July 27, 2010.

1           47.     Attached hereto as Exhibit 47 is a true and correct copy of a publication of the U.S.  
2 FDA titled "Guidance for Industry, Clinical Trial Endpoints for the Approval of Cancer Drugs and  
3 Biologics," dated May 2007 and located at BAY00629003.

4           48.     Attached hereto as Exhibit 48 is a true and correct copy of a memorandum titled  
5 "Memorandum of Meeting Minutes" dated September 10, 2010 and located at ONYX00529280.

6           49.     Attached hereto as Exhibit 49 is a true and correct copy of Bayer Deposition  
7 Exhibit 257, "Phase III Breast Cancer Programs," dated October 27, 2010.

8           50.     Attached hereto as Exhibit 50 is a true and correct copy of an excerpt from the  
9 deposition transcript of Ted Love, an Onyx employee, taken December 17, 2010.

10          51.     Attached hereto as Exhibit 51 is a true and correct copy of an email from Roland  
11 Turck to Laura Brege, subject line "AI trial," dated March 9, 2011, and located at BAY00662538.

12          52.     Attached hereto as Exhibit 52 is a true and correct copy of an excerpt from the  
13 deposition transcript of Jacques Dumas, a former Bayer chemist, taken September 20, 2010.

14          53.     Attached hereto as Exhibit 53 is a true and correct copy of the Strategic Project  
15 Plan for the 2nd Generation Raf Kinase Inhibitor, dated November 25, 2002 and located at  
16 BAY00290431.

17          54.     Attached hereto as Exhibit 54 is a true and correct copy of Onyx Deposition  
18 Exhibit 49, the "DP1 Document" for BAY 73-4506 (DAST), dated November 18, 2003.

19          55.     Attached hereto as Exhibit 55 is a true and correct copy of and excerpt from the  
20 deposition transcript of Mark Gelder, Vice President of Global Medical Affairs Oncology at  
21 Bayer, taken February 11, 2011.

22          56.     Attached hereto as Exhibit 56 is a true and correct copy of Onyx Deposition  
23 Exhibit 74, International Patent Publication number WO 2005/009961, dated February 3, 2005.

24          57.     Attached hereto as Exhibit 57 is a true and correct copy of Bayer Deposition  
25 Exhibit 200, U.S. Patent Application Publication number US 2005/0038080, dated February 17,  
26 2005.

27          58.     Attached hereto as Exhibit 58 is a true and correct copy of an excerpt from the  
28 deposition transcript of Leonard Post, a former Onyx employee, taken September 27, 2010.

59. Attached hereto as Exhibit 59 is a true and correct copy of an excerpt from the deposition transcript of Gregory Giotta, an Onyx employee, taken November 17, 2010.

60. Attached hereto as Exhibit 60 is a true and correct copy of Bayer Deposition Exhibit 279, the Expert Report of Onyx-retained expert Dr. Iain M. Cockburn, dated January 10, 2011.

61. Attached hereto as Exhibit 61 is a true and correct copy of Bayer Deposition Exhibit 131, a fax with attached proposed Term Sheet from Robert Jones to Klaus Brandau and Wolf-Dieter Busse, dated July 22, 1993.

62. Attached hereto as Exhibit 62 is a true and correct copy of Bayer Deposition Exhibit 75, a fax with attached draft of Collaboration Agreement from Barclay Kamb to Klaus Brandau, dated December 2, 1993.

63. Attached hereto as Exhibit 63 is a true and correct copy of Bayer Deposition Exhibit 77, minutes from a "Meeting between Onyx Pharmaceuticals and Bayer/Miles in Richmond, CA on January 25/26, 1994."

64. Attached hereto as Exhibit 64 is a true and correct copy of Bayer Deposition Exhibit 190, U.S. Patent No. 7,351,834, issue date April 1, 2008.

65. Attached hereto as Exhibit 65 is a true and correct copy of Bayer Deposition Exhibit 239, draft minutes from the October 21, 2010 meeting of the JDC.

66. Attached hereto as Exhibit 66 is a true and correct copy of an excerpt from the deposition transcript of Onyx-retained expert Iain Cockburn, taken February 23, 2011.

67. Attached hereto as Exhibit 67 is a true and correct copy of slides titled "Development Project Summaries," dated September 14, 2010 and located at ONYX00863372.

68. Attached hereto as Exhibit 68 is a true and correct copy of a letter from Michelle Rhyu to Brian Swanson and Lawrence Katzin, dated November 25, 2009.

69. Attached hereto as Exhibit 69 is a true and correct copy of the web page located at <http://www.onyx-pharm.com/view.cfm/4/Clinical-Pipeline> (visited 3/13/11).

70. Attached hereto as Exhibit 70 is a true and correct copy of an excerpt from the deposition transcript of Onyx-retained expert Robert Mass, taken March 3, 2011.

Hearsay

1           71.     Attached hereto as Exhibit 71 is a true and correct copy of an excerpt from the  
2 deposition transcript of Mohan Rao, taken February 25, 2011.

3           72.     Attached hereto as Exhibit 72 is a true and correct copy of Bayer Deposition  
4 Exhibit 292, "CRC Strategy Onyx Analysis" slides, dated June 2009.

5           73.     Attached hereto as Exhibit 73 is a true and correct copy of Bayer Deposition  
6 Exhibit 293, a slide titled "Development of Nexavar for Treatment of CRC KRAS: PTRS: Dr.  
7 Mass's v. Bayer and Onyx."

8           74.     Attached hereto as Exhibit 74 is a true and correct copy of Bayer Deposition  
9 Exhibit 260, "Portfolio Analysis Portfolio Review Meeting" slides, dated October 14, 2010.

10          75.     Attached hereto as Exhibit 75 is a true and correct copy of Bayer Deposition  
11 Exhibit 294, "CRC KRAS 2nd Line EC Discussion Guide" slides, dated August 18, 2009.

12          76.     Attached hereto as Exhibit 76 is a true and correct copy of Bayer Deposition  
13 Exhibit 286, "Frontline Aromatase Inhibitor Breast Cancer Business Case Overview" slides, dated  
14 January 20, 2011.

15          77.     Attached hereto as Exhibit 77 is a true and correct copy of Bayer Deposition  
16 Exhibit 287, "Business Case Analysis: Sorafenib Combinations in Breast Cancer" slides, dated  
17 April 2009.

18          78.     Attached hereto as Exhibit 78 is a true and correct copy of Bayer Deposition  
19 Exhibit 33, U.S. Co-Promotion Agreement, dated March 6, 2006.

20          79.     Attached hereto as Exhibit 79 is a true and correct copy of an excerpt from the  
21 30(b)(6) deposition transcript of Laura Brege, an Onyx employee, taken August 19, 2010.

22          80.     Attached hereto as Exhibit 80 is a true and correct copy of Onyx Responses to  
23 Bayer's Third set of Interrogatories.

1 I declare under penalty of perjury under the laws of the United States that, to the best of  
2 my knowledge, the foregoing is true and correct.

3 Executed on March 15, 2011, in Chicago, Illinois.

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6 By: /s/Brian C. Swanson  
Brian C. Swanson  
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14 Attorneys for Defendants

BAYER CORPORATION; BAYER HEALTHCARE LLC;

15 BAYER AG; BAYER SCHERING PHARMA AG

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN FRANCISCO DIVISION

19 ONYX PHARMACEUTICALS, INC.,

20 Plaintiff,

21 v.

22 BAYER CORPORATION, et al.,

23 Defendants.

Case No. CV 09 2145 MHP

**SUPPLEMENTAL DECLARATION OF  
BRIAN C. SWANSON IN SUPPORT OF  
BAYER'S MOTION FOR SUMMARY  
JUDGMENT**

**HEARING DATE: APRIL 25 AT 2 P.M.**

26 EXHIBITS 82 AND 85

27 PROVISIONALLY FILED UNDER SEAL

1  
2 I, Brian C. Swanson, declare as follows:

3 I submit this supplemental declaration in connection with Bayer Corp.'s, Bayer HealthCare  
4 LLC's, Bayer Schering Pharma AG's and Bayer AG's (collectively, "Bayer's") Motion for  
5 Summary Judgment. I am a partner with the law firm of Bartlit Beck Herman Palenchar & Scott  
6 LLP. I have been admitted to practice and am an attorney in good standing in the state of Illinois.  
7 I have been admitted *pro hac vice* in this Court. I have personal knowledge of the facts set forth in  
8 this declaration. I am competent to testify as to the matters set forth in this declaration, and I  
9 would do so if called to testify.

10 1. Attached hereto as Exhibit 81 is a true and correct copy of an additional excerpt  
11 from the deposition transcript of William Scott, a Bayer chemist, taken May 6, 2010. An earlier  
12 excerpt from the deposition transcript of William Scott is attached to my original declaration as  
13 exhibit 13.

14 2. Attached hereto as Exhibit 82 is a true and correct copy of Bayer Deposition  
15 Exhibit 342, List of Compound Structures.

16 3. Attached hereto as Exhibit 83 is a true and correct copy of the NDA approval letter  
17 for DTIC-DOME (dacarbazine), dated May 27, 1975.

18 4. Attached hereto as Exhibit 84 is a true and correct copy of correspondence from  
19 Aileen Ryan to Robert Justice of the FDA regarding DTIC-Dome (dacarbazine) dated July 6,  
20 2006.

21 5. Attached hereto as Exhibit 85 is a true and correct copy of an additional excerpt  
22 from the deposition transcript of Anthony Coles, president and CEO of Onyx, taken October 20,  
23 2010. An earlier excerpt from the deposition of Anthony Coles is attached to my original  
24 declaration as exhibit 41.

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SUPPLEMENTAL DECLARATION OF BRIAN C. SWANSON IN SUPPORT OF BAYER'S MOTION FOR SUMMARY JUDGMENT  
Case No. CV 09 2145 MHP

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BAYER AG; BAYER SCHERING PHARMA AG

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 ONYX PHARMACEUTICALS, INC.,

20 Plaintiff,

21 v.

22 BAYER CORPORATION, et al.,

23 Defendants.

Case No. CV 09 2145 MHP

**SECOND SUPPLEMENTAL DECLARATION  
OF BRIAN C. SWANSON IN SUPPORT OF  
BAYER'S MOTION FOR SUMMARY  
JUDGMENT**

**HEARING DATE: APRIL 25 AT 2 P.M.**

24  
25 EXHIBITS 88-93  
26 PROVISIONALLY FILED UNDER SEAL  
27  
28

SECOND SUPPLEMENTAL DECLARATION OF  
BRIAN C. SWANSON IN SUPPORT OF BAYER MSJ  
Case No. CV 09 2145 MHP

1  
2 I, Brian C. Swanson, declare as follows:

3 I submit this second supplemental declaration in connection with Bayer Corp.'s, Bayer  
4 HealthCare LLC's, Bayer Schering Pharma AG's and Bayer AG's (collectively, "Bayer's")  
5 Motion for Summary Judgment. I am a partner with the law firm of Bartlit Beck Herman  
6 Palenchar & Scott LLP. I have been admitted to practice and am an attorney in good standing in  
7 the state of Illinois. I have been admitted *pro hac vice* in this Court. I have personal knowledge  
8 of the facts set forth in this declaration. I am competent to testify as to the matters set forth in this  
9 declaration, and I would do so if called to testify.

10 1. Attached hereto as Exhibit 88 is a true and correct copy of an excerpt from the  
11 deposition transcript of Robert Jones, taken October 26, 2010.

12 2. Attached hereto as Exhibit 89 is a true and correct copy of an excerpt from the  
13 deposition transcript of Frank McCormick, taken February 22, 2011.

14 3. Attached hereto as Exhibit 90 is a true and correct copy of an excerpt from the  
15 deposition transcript of Hollings Renton, taken September 29, 2010.

16 4. Attached hereto as Exhibit 91 is a true and correct copy of an excerpt from the  
17 deposition transcript of Nancy Kamei, taken November 2, 2010.

18 5. Attached hereto as Exhibit 92 is a true and correct copy of an excerpt from the  
19 deposition transcript of Robert Mass, taken March 3, 2011.

20 6. Attached hereto as Exhibit 93 is a true and correct copy of an excerpt from the  
21 deposition transcript of Leonard Post, taken September 27, 2010.

22 I declare under penalty of perjury under the laws of the United States that, to the best of  
23 my knowledge, the foregoing is true and correct.

24 Executed on April 7, 2011, in Chicago, Illinois.

25  
26 By: /s/ Brian C. Swanson  
Brian C. Swanson